TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL NOTE

HB 2397 - SB 2383

March 6, 2022

SUMMARY OF BILL: Requires a public agency to include a provision in a contract for the constructions, reconstruction, alteration, repair, improvement, or maintenance of public buildings and public works that the iron, steel, and manufactured good used or supplied in the performance of the contract must be manufactured in the United States.

Authorizes the head of a public agency to wave such manufacturing requirements if it is determined that:

- The application of the requirement is inconsistent with the public interest;
- The necessary material and product are not produced in the United States in sufficient and reasonably available quantity of a satisfactory quality; or
- Inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

Requires that, upon receipt of a request for any such waiver, the head of an agency must provide notice and an opportunity for public comment on such request within 30 days before issuing a decision approving or disapproving such waiver.

Such notification is required to include the condition which provides basis for such waiver request and be available via electronic means.

Upon issuance of a waiver, the appropriate public agency must publish a document on its website before such waiver takes effect, addressing public comments received.

Prohibits any person, corporation, firm, association, organization, partnership, limited liability company, or business from entering into a state contract if a court, federal or public agency determines such person or entity has affixed a fraudulent “Made in America” inscription or of similar meaning to iron, steel, or a manufactured good or represented that iron, steel, or a manufactured good used in fulfillment of an applicable state contract was manufactured in the United States.

FISCAL IMPACT:

Increase State Expenditures – $367,624,900/FY22-23 and Subsequent Years/ General Fund

$13,977,700/FY22-23 and Subsequent Years/ Higher Education

$4,995,600/FY22-23/Highway Fund
$4,983,500/FY23-24 and Subsequent Years/ Highway Fund

Increase Local Expenditures – Exceeds $10,000,000/FY22-23 and Subsequent Years*

Other Fiscal Impact - This legislation will result in an increase in state expenditures across various other state governmental entities for increased costs of iron, steel, and manufactured goods. Due to various unknown variables, such increase cannot be reasonably determined.

Assumptions:

- This legislation is estimated to result in a significant increase in state expenditures from state contracts in which iron, steel, or manufactured goods are required, as the costs to manufacture or produce such goods in the United States generally exceeds comparative costs in other regions of the world, even accounting for shipping costs.
- Based on information provided by the Department of Transportation (TDOT), this legislation would result in increased costs for transit and rail projects.
- In FY20-21, TDOT spent $8,500,000 for state only grants on transit capital projects.
- The cost of steel is estimated to comprise of approximately 13 percent of the cost of construction projects.
- Steel made in the USA is 58.9 percent more expensive than steel made in Western Europe.
- It is estimated that this legislation will result in an increase in construction costs for TDOT and capital projects by 7.7 percent (58.9% x 13%).
- A recurring increase in state expenditures to the Highway Fund of $654,500 ($8,500,000 x 7.7 %).
- In FY20-21, TDOT spent $10,000,000 for bridge rehabilitation projects, relating to the Department's Rail Preservation Grant Program.
- A recurring increase in state expenditures to the Highway Fund of $770,000 ($10,000,000 x 7.7%).
- Based on information from TDOT, this legislation will implement law that is more stringent than the federal "Buy America Law," to which it must currently adhere.
- The differences in this legislation and such federal law are as follows:
    - This legislation does not include language in the federal law which exempts cement and cementitious materials, aggregates (stone, sand, and gravel), and aggregate binding agents or additives; and

    - This legislation requires that a manufactured good is only manufactured in the United States if (every component) of the good originates from the United States. Such federal law requires only that components of a manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product (therefore, 45 percent of such components may be supplied from out-of-country).
- Based on information from TDOT, many components used in intelligent transportation systems and traffic signal/operations are not all domestically mined, produced, or manufactured, if available at all.
- Based on information from TDOT, the impact of this legislation would result in a recurring increase in state expenditures to the Highway Fund of $3,357,200.
- Additionally, TDOT will require 2 additional positions to ensure all TDOT materials meet the requirements of this legislation – 1 administrative assistant-2, 1 Transportation Project Specialist, and 1 Procurement Officer-1).
- There will be a recurring increase in state expenditures of $201,793 {[($41,148 salary + $13,761 benefits + $200 supplies) x 1 Administrative Assistant-2 position] + [($70,368 salary + $18,614 benefits + $200 supplies) x 1 Transportation Specialist-1 position] + [($43,200 salary + $14,102 benefits + $200 supplies) x 1 Procurement Officer-1 position]} in FY22-23 subsequent years.
- There will be a one-time increase in expenditures to the Highway Fund of approximately $12,115 associated with such positions.
- An increase in state expenditures to the Highway Fund in FY22-23 of $4,995,608 ($654,500 + $770,000 + $3,357,200 + $201,793 + $12,115).
- A recurring increase in state expenditures to the Highway Fund in FY23-24 and subsequent years of $4,983,493 ($654,500 + $770,000 + $3,357,200 + $201,793).
- The Department of General Services (DGS) estimates this legislation will have a significant impact on construction costs for capital projects.
- An increase in its costs equal to 7.7 percent of the recommended general government capital budget for FY22-23.
- The DGS has a recommended general government capital budget of $1,739,705,065, as found in the Governor's FY22-23 budget ($1,029,915,000, page A-135, Other Agencies + $10,065,000, page A-139, Capital Improvements + $709,780,000, page A-164, FRF Projects).
- A recurring increase in state expenditures to the General Fund in FY22-23 of $133,957,290 ($1,749,000,000 x 7.7%).
- Additionally, the capital budget of $3,034,644,000 on page A-133 of the Governor's FY22-23 budget will experience a 7.7 percent increase in costs, for a recurring increase in state expenditures to the General Fund of $233,667,588 ($3,034,644,000 x 7.7%).
- A total recurring increase in state expenditures to the General Fund of $367,624,878 ($133,957,290 + $233,667,588).
- Additionally, DGS estimates this legislation will have a similar impact to Higher Education, or THEC. The disclosed capital budget for higher education of $181,528,000 on page A-140 will experience a 7.7 percent increases in cost, or $13,977,656 ($181,528,000 x 7.7%).

- This legislation will result in an increase in state expenditures across various other state governmental entities for increased costs of iron, steel, or manufactured goods. Due to various unknown variables, such increase cannot be reasonably determined.
- This legislation also applies to local governments.
- Due to numerous unknown variables, any increase in local government expenditures cannot be known with exact specificity, but is reasonable estimated to exceed $10,000,000.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Krista Lee Carsner

Krista Lee Carsner, Executive Director

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